

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAINTERS DISTRICT COUNCIL NO. 2)
et.al.,)
)
Plaintiffs,)
)
vs.) Case No: 4:14CV1971 HEA
)
COMMERCIAL DRYWALL)
CORPORATION, *et al.*,)
)
Defendants.)

**MEMORANDUM AND ORDER ON PLAINTIFFS'
MOTION FOR ENTRY OF DEFAULT JUDGMENT – AUDIT**

This matter is before the Court on Plaintiffs' Motion for Default Judgment against Commercial Drywall Corporation and Thomas Wilkerson. Plaintiffs filed this action on November 25, 2014 under the Employee Retirement Security Act, 29 U.S.C. §§ 1132 and 1145, and the Labor Management Relations Act, 29 U.S.C. § 185. The Complaint alleges Defendants have failed to make accounting and to fully pay several employee benefit funds and contributions due under the collective bargaining agreement between Defendant Commercial Drywall Corporation and its employees' union. Plaintiffs are the union and the trustees, sponsors and/or fiduciaries of the various funds.

The Clerk of Court entered an order of default against the Defendants on January 7, 2015.

Plaintiffs seek a default judgment requiring Defendants to submit to an accounting under the parties' trust documents, collective bargaining agreement and common law under ERISA.

When the Clerk of Court has entered default against a defendant, the "allegations of the complaint except as to the amount of damages are taken as true." *Mueller v. Jones*, No. 2:08CV16 JCH, 2009 WL 500837, at *1 n.2 (E.D. Mo. Feb. 27, 2009) (quoting *Brown v. Kenron Aluminum & Glass Corp.*, 477 F.2d 526, 531 (8th Cir. 1973)). Accordingly, in deciding the present motion for default judgment, the Court accepts as true the factual allegations contained in the Plaintiffs' Complaint, together with the argument presented in the Plaintiffs' motion and memorandum in support as they relate to the Plaintiffs' damages.

Based on the allegations and Defendants being in default, the Plaintiffs are entitled to the partial relief requested.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Partial Default Judgment, [Doc. No. 7] is granted. Defendants shall submit the documents requested for the period December 4, 2013 to the date of this Order to Plaintiffs'

attorney within ten (10) days from this Opinion, Memorandum and Order. Failure to comply with this Order may result in the imposition of sanctions.

Dated this 10th day of June, 2015.



HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE